

1 UNITED STATES DISTRICT COURT  
 2 FOR THE EASTERN DISTRICT OF VIRGINIA  
 Alexandria Division

3 UNITED STATES OF AMERICA, :  
 4 Plaintiff : Criminal Case  
 : No. 20-CR-00143-TSE  
 5 v. : November 27, 2021  
 : 9:35 a.m.  
 6 ZACKARY ELLIS SANDERS, :  
 : JURY INSTRUCTIONS  
 7 Defendant : VERDICT  
 ..... : .....

8 TRANSCRIPT OF TRIAL PROCEEDINGS  
 9 DAY 7  
 10 BEFORE THE HONORABLE T.S. ELLIS, III  
 UNITED STATES DISTRICT JUDGE  
 11 and a jury

12 APPEARANCES:

13 FOR THE PLAINTIFF: SETH SCHLESSINGER  
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24 (APPEARANCES CONTINUED ON NEXT  
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**( Pages 1 - 66)**

**COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES**

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**P R O C E E D I N G S**

THE COURT: Good morning. The record will reflect that the defendant, counsel for the defendant and counsel for the Government are present and prepared to proceed. We're going to bring the jury in, do the usual calling of the roll, ask the question, and I'll proceed to instruct the jury. Bring the jury in, please.

(Jury in at 9:37 a.m.)

THE COURT: Good morning, ladies and gentlemen. We'll begin, as always, with the calling of the roll.

COURTROOM CLERK: Juror number 19, Joseph Hilton.

JUROR: Present.

COURTROOM CLERK: Juror number 2, Bruce Arthur.

JUROR: Present.

COURTROOM CLERK: Juror number 31, Joshua Mecham.

JUROR: Present.

COURTROOM CLERK: Juror number 2, Candice Alidoosti.

JUROR: Present.

COURTROOM CLERK: Juror number 26, Richard Loveland the second.

JUROR: Present.

COURTROOM CLERK: Juror number 33, Lucinda McLaughlin.

JUROR: Present.

COURTROOM CLERK: Juror number 27, Patrick Kerns.

PROSPECTIVE JUROR: Present.

1 COURTROOM CLERK: Juror number 6, Jason Brost.

2 JUROR: Present.

3 COURTROOM CLERK: Juror number 38, Christy Rice.

4 JUROR: Present.

5 COURTROOM CLERK: Juror number 31, Michael Mason.

6 JUROR: Present.

7 COURTROOM CLERK: Juror number 16, Kamel Elhassani.

8 JUROR: Present.

9 COURTROOM CLERK: Juror number 7, Razzakul Chowdhury.

10 JUROR: Present.

11 COURTROOM CLERK: Juror number 42, Elizabeth Sheriff.

12 JUROR: Present.

13 COURTROOM CLERK: And juror number 6, Patrick Campo.

14 JUROR: Present.

15 THE COURT: Again, good morning, ladies and gentlemen.

16 Let me ask, were any of you unable to follow the Court's and  
17 adhere to the Court's instructions to refrain from discussing  
18 the matter among yourselves or with anyone, or undertaking any  
19 investigation on your own?

20 The record will reflect that no hands are raised. And  
21 I see some shaking of heads, so am I correct in assuming that  
22 you were all able to adhere to the Court's instructions?

23 All right. The record will reflect that there seems to  
24 be a unanimous nodding of the heads.

25 Members of the jury, now that you've heard the evidence

1 and arguments of counsel, it becomes my duty to give you  
2 instructions as to the law applicable to this case. All of the  
3 instructions of law given to you by the Court, those given to  
4 you at the beginning of the trial, those given to you during the  
5 trial, and these final instructions must guide and govern your  
6 deliberations. It is your duty as jurors to follow the law as  
7 stated by the Court and to apply the rules of law to the facts  
8 as you find them from the evidence in the case.

9 Counsel have quite properly referred to some of the  
10 governing rules of law in their arguments. If, however, any  
11 difference appears to you between the law as stated by counsel  
12 and that stated by the Court in these instructions, you are, of  
13 course, to be governed by the Court's instructions. Nothing I  
14 say in these instructions is to be taken as an indication that I  
15 have any opinion about the facts of the case, or what that  
16 opinion is. It is not my function to determine the facts, but  
17 yours.

18 You are not to single out one instruction alone as  
19 stating the law but must consider the instructions as a whole.  
20 Neither are you to be concerned with the wisdom of any rule of  
21 law stated by the Court. Regardless of any opinion you may have  
22 as to what you think the law ought to be, it would be a  
23 violation of your sworn duty as jurors if you ignore the law as  
24 I give it to you and apply some other law. It would also be a  
25 violation of your sworn duty as jurors of the facts to base a

1 verdict upon anything but evidence in the case.

2 You've been chosen as jurors for this trial in order to  
3 evaluate all the evidence received and to decide each of the  
4 factual questions presented by the allegations brought by the  
5 Government in the indictment and the pleas of not guilty by the  
6 defendant.

7 In deciding the issues presented to you for decision in  
8 this trial, you must not be persuaded by bias, prejudice, or  
9 sympathy for or against any of the parties in this case, or by  
10 any public opinion. You should not be influenced by any  
11 person's race, color, religion, national ancestry or sex.  
12 Justice through trial by jury must always depend upon the  
13 willingness of each individual juror to seek the truth as to the  
14 facts from the same evidence presented to all jurors, and to  
15 arrive at a verdict by applying the same rules of law given by  
16 the Court.

17 Now, the law presumes -- as I told you at the outset,  
18 the law presumes a defendant to be innocent of a crime. Thus, a  
19 defendant, although accused, begins the trial with a clean  
20 slate, with no evidence against him. And the law permits  
21 nothing but legal evidence presented before the jury to be  
22 considered in support of any charge against the accused. So the  
23 presumption of innocence alone is sufficient to acquit a  
24 defendant unless the jurors are satisfied beyond a reasonable  
25 doubt of the defendant's guilt after careful and impartial

1 consideration of all the evidence in the case. It is not  
2 required that the Government prove guilt beyond all possible  
3 doubt. The test is one of reasonable doubt.

4 The jury will remember that a defendant is never to be  
5 convicted on mere suspicion or conjecture. The burden is always  
6 on the prosecution to prove guilt beyond a reasonable doubt.  
7 The burden never shifts to a defendant, for the law never  
8 imposes upon a defendant in a criminal case the burden or duty  
9 of calling any witnesses or producing any evidence. So if the  
10 jury, after careful and impartial consideration of all the  
11 evidence in the case, has a reasonable doubt that the defendant  
12 is guilty of the charge, it must acquit.

13 There is nothing particularly different in the way that  
14 a juror should consider the evidence in a trial from that in  
15 which any reasonable and careful person would treat any very  
16 important question that must be resolved by examining facts,  
17 opinions, and evidence. You're expected to use your good sense  
18 in considering and evaluating the evidence in the case, for only  
19 those purposes for which it has been received, and to give such  
20 evidence a reasonable and fair construction in the light of your  
21 common knowledge of the natural tendencies and inclinations of  
22 human beings. If a defendant be proved guilty beyond a  
23 reasonable doubt, say so. If not proved guilty beyond a  
24 reasonable doubt, say so.

25 Keep constantly in mind that it would be a violation of

1 your sworn duty to base a verdict upon anything other than the  
2 evidence received in the case and the instructions of the Court.  
3 Remember as well that the law never imposes upon a defendant in  
4 a criminal case the burden or duty of calling any witnesses or  
5 producing any evidence because the burden of proving guilt  
6 beyond a reasonable doubt is always with the Government.

7 Now, the evidence in this case, as I've told you at the  
8 outset, consists of the sworn testimony of the witnesses,  
9 regardless of who may have called them, all exhibits received in  
10 evidence, regardless of who may have produced them, and you'll  
11 have all of these in the jury room. And to the extent that any  
12 of them are CDs or something that need to be played, there will  
13 also be a device this the jury room that will permit that.

14 Am I correct, Tanya?

15 COURTROOM CLERK: Yes, Judge.

16 THE COURT: All right. So as I said, the evidence in  
17 the case consists of the sworn testimony of the witnesses,  
18 regardless of who may have called them, all exhibits received in  
19 evidence, regardless of who may have produced them, and all  
20 facts which may have been agreed or stipulated to, and all facts  
21 and events which may have been judicially noticed. Any proposed  
22 testimony or proposed exhibit as to which an objection was  
23 sustained by the Court, any testimony or exhibit ordered  
24 stricken by the Court must be entirely disregarded. And  
25 anything you may have seen or read or heard outside the



1 courtroom is not proper evidence and must be entirely  
2 disregarded.

3 Questions, objections, statements and arguments of  
4 counsel are not evidence in the case. You are to base your  
5 verdict only on the evidence received in the case. And in your  
6 consideration of the evidence received, however, you are not  
7 limited to the bald statements of the witnesses or to the bald  
8 assertions in the exhibits. In other words, you're not limited  
9 solely to what you see and hear as the witnesses testify or as  
10 the exhibits are admitted. You're permitted to draw from the  
11 facts that you find have been proved such reasonable inferences  
12 as you feel are justified in the light of your experience and  
13 common sense.

14 Now, the questions asked by a lawyer for either party  
15 to this case are not evidence. The questions received by a  
16 lawyer for either party -- the questions asked by a lawyer for  
17 either party are not evidence. If a lawyer asks a question of a  
18 witness which contains an assertion of fact, you may not  
19 consider the assertion by the lawyer as any evidence of that  
20 fact. Only the answers are evidence.

21 As I told you at the outset, there are two types of  
22 evidence which are generally presented during a trial, direct  
23 evidence and circumstantial evidence. Direct evidence is the  
24 testimony of a person who asserts or claims to have actual  
25 knowledge of a fact, such as an eyewitness. Circumstantial

1 evidence is proof of a chain of facts and circumstances  
2 indicating the existence of a fact.

3 The law makes no distinction between the weight or  
4 value to be given to either direct or circumstantial evidence,  
5 nor is a greater degree of certainty required of circumstantial  
6 evidence than of direct evidence. You should weigh all the  
7 evidence in the case, and after weighing all the evidence, if  
8 you are not convinced of the guilt of the defendant beyond a  
9 reasonable doubt, you must find the defendant not guilty.

10 Now, inferences are simply deductions or conclusions  
11 which reason and common sense lead the jury to draw from the  
12 evidence in the case. Testimony and exhibits can be admitted  
13 into evidence during a trial only if certain criteria or  
14 standards are met. It's the sworn duty of the attorney on each  
15 side of a case to object when the other side offers testimony or  
16 an exhibit which that attorney believes is not properly  
17 admissible under the rules of law. Only by raising an objection  
18 can a lawyer request and obtain a ruling from the Court on the  
19 admissibility of the evidence being offered by the other side.

20 You should not be influenced against an attorney or his  
21 or her client because the attorney has made objections. Do not  
22 attempt, moreover, to interpret any rulings, my rulings on  
23 objections as somehow indicating how I think you should decide  
24 the case. I'm simply making a ruling on a legal question.

25 By allowing the testimony or other evidence to be

1 introduced over the objections of an attorney, the Court does  
2 not, unless expressly stated, indicate any opinion as to the  
3 weight or effect of the evidence. As stated before, you and you  
4 alone, as jurors, are the sole judges of the credibility of all  
5 the witnesses and the weight and effect of all the evidence.

6 On the other hand, where the Court has sustained an  
7 objection to a question addressed to a witness, jurors must  
8 disregard the statement entirely. You may draw no inference in  
9 the wording of the question, or speculate as to what the witness  
10 would have said had he or she been permitted to answer the  
11 question.

12 It's the duty of the Court to admonish an attorney who,  
13 out of zeal for his or her cause, does something which I feel is  
14 not in keeping with the rules of evidence or procedure. You are  
15 to draw absolutely no inference against the side to whom an  
16 admonition of the Court may have been addressed during the trial  
17 of this case.

18 The law of the United States permits a federal judge to  
19 comment to the jury on the evidence in the case. Such comments  
20 are, however, only expressions of my opinion as to the facts,  
21 and the jury may disregard them entirely. You as jurors are the  
22 sole judges of the facts in this case, and it's your  
23 recollection and evaluation of the evidence that is important to  
24 the verdict in this case. Although you must follow the Court's  
25 instructions concerning the law applicable to this case, you are

1 totally free to accept or reject any observation concerning the  
2 evidence received in the case.

3 During the course of the trial, I may have occasionally  
4 asked questions of a witness. Do not assume that I hold any  
5 opinion on the matters to which my questions related. The Court  
6 may have asked questions simply to clarify a matter, not to help  
7 one side of the case or hurt another. Remember, as I've said  
8 several times, at all times you as jurors are the sole judges of  
9 the facts of this case.

10 Your opinion on the facts of this case should not be  
11 determined on the number of witnesses testifying for or against  
12 a party. You should consider all the facts and circumstances in  
13 evidence to determine which of the witnesses you choose to  
14 believe or not believe. You may find that the testimony of a  
15 smaller number of witnesses on one side is more credible than  
16 the testimony of a greater number of witnesses on the other  
17 side.

18 Charts or summaries have been prepared by the  
19 Government and have been admitted into evidence, and have been  
20 shown to you during the trial for the purpose of explaining  
21 facts that are allegedly contained in records or other documents  
22 which have been admitted in the case -- into evidence in the  
23 case. You may consider the charts and summaries as you would  
24 any other evidence admitted during the trial, and give them such  
25 weight or importance, if any, as you may -- as you feel they

1       deserve.

2               Now, the rules of evidence ordinarily do not permit  
3       witnesses to testify as to their own opinions or their own  
4       conclusions about issues in the case. An exception to this rule  
5       exists as to those witnesses who are described as expert  
6       witnesses. An expert witness is someone who, by education or by  
7       experience, may have become knowledgeable in some technical,  
8       scientific, or very specialized area.

9               If such knowledge or experience may be of assistance to  
10      you in understanding some of the evidence or in determining a  
11      fact, an expert witness in that area may state an opinion as to  
12      relevant and material matter in which he or she claims to be an  
13      expert.

14              You should consider the expert opinion received in this  
15      case and give it such weight as you may think it deserves. You  
16      should consider the testimony of expert witnesses just as you  
17      consider other evidence in the case. If you should decide that  
18      the opinion of an expert is not based on sufficient education or  
19      experience or if you should conclude that the reasons given in  
20      support of the opinion are not sound or if you should conclude  
21      that the opinion is outweighed by other evidence in the case,  
22      you may disregard the opinion in part or in its entirety. And  
23      as I've told you several times, you, the jury, are the sole  
24      judges of the facts of this case.

25              If any reference by the Court or by counsel to matters

1 of testimony or exhibits does not coincide with your own  
2 recollection of that evidence, it is your recollection which  
3 should control during your deliberations, and not the statement  
4 of the Court or of counsel. You're the sole judges of the  
5 evidence received in the case.

6 Now, as I've told you before, you as jurors are the  
7 sole and exclusive judges of the credibility of each of the  
8 witnesses called to testify in this case, and only you determine  
9 the importance or the weight that their testimony deserves.  
10 After making your assessment concerning the credibility of a  
11 witness, you may decide to believe all of that witness'  
12 testimony or only a portion of it, or none of it. In making  
13 your assessment, you should carefully scrutinize all of the  
14 testimony given, the circumstances under which each witness has  
15 testified, and all of the other evidence which tends to show  
16 whether a witness is worthy of belief.

17 Consider each witness' intelligence, motive to falsify,  
18 state of mind, and appearance and manner while on the stand.  
19 Consider each of the witness' ability to observe the matters as  
20 to which he or she has testified, and consider whether he or she  
21 impresses you as having an accurate recollection -- an accurate  
22 memory or recollection of these matters.

23 Consider also any relation a witness may bear to either  
24 side of the case, the manner in which each witness might be  
25 affected by your verdict, and the extent to which, if at all,

1 the witness is either supported or contradicted by other  
2 evidence in the case.

3 Now, inconsistencies or discrepancies in the testimony  
4 of a witness or between the testimony of different witnesses may  
5 or may not cause you to disbelieve or discredit such testimony.  
6 Two or more persons witnessing an incident or a transaction may  
7 simply see or hear it differently. Innocent misrecollection,  
8 like failure of recollection, is not an uncommon experience. In  
9 weighing the effect of a discrepancy, however, always consider  
10 whether it pertains to a matter of importance or an  
11 insignificant detail, and consider whether the discrepancy  
12 results from innocent error or intentional falsehood.

13 In connection with your evaluation of the credibility  
14 of witnesses, you should specifically consider evidence of  
15 resentment or anger, which some witness may have. Evidence that  
16 a witness is biased, prejudiced, or hostile toward one side or  
17 another may require you to view that witness' testimony with  
18 caution or to weigh it with care, and subject it to close and  
19 searching scrutiny.

20 After making your own judgment or assessment concerning  
21 the believability of a witness, you can then attach such  
22 importance or weight to that testimony, if any, that you feel it  
23 deserves. You will then be in a position to decide whether the  
24 Government has proven the charges beyond a reasonable doubt.

25 Now, evidence relating to any alleged statement or

1 confession or admission or act or omission alleged to have been  
2 made or done by a defendant outside of court and after a crime  
3 has been committed should always be considered by the jury with  
4 caution, and weighed with greater care. All such alleged  
5 statements, confessions, or admissions should be disregarded  
6 entirely unless other evidence in the case convinces the jury  
7 beyond a reasonable doubt that the statement, confession,  
8 admission, or act or omission was made or done knowingly and  
9 voluntarily.

10 In determining whether any statement, confession,  
11 admission, or act or omission alleged to have been made by a  
12 defendant outside of court after a crime has been committed was  
13 knowingly and voluntarily made, the jury should consider the  
14 age, training, education, occupation, and physical and mental  
15 condition of the defendant, and his treatment while in custody  
16 or under interrogation as shown by the evidence in the case.  
17 Also consider all other circumstances in evidence surrounding  
18 the making of the statement, confession, or admission.

19 If after considering all -- after considering the  
20 evidence, you determine that a statement, confession, admission,  
21 or act or omission was made or done knowingly and voluntarily,  
22 you may give it such weight as you feel it deserves under the  
23 circumstances.

24 Statements knowingly made -- statements knowingly and  
25 voluntarily made by a defendant upon being informed that a crime



1 has been committed or upon being accused of a criminal charge  
2 may be considered by the jury. When a defendant voluntarily  
3 offers an explanation or voluntarily makes some statement  
4 tending to show his or her innocence, and it is later shown that  
5 the defendant knew that the statement or explanation was false,  
6 the jury may consider this as showing a consciousness of guilt  
7 on the part of the defendant since it is reasonable to infer  
8 that an innocent person does not usually find it necessary to  
9 invent or fabricate an explanation or statement tending to  
10 establish his innocence.

11 Whether or not evidence as to a defendant's explanation  
12 or statement points to a consciousness of guilt on his or her  
13 own part, and the significance, if any, to be attached to any  
14 such evidence are matters exclusively within the province of the  
15 jury as the sole judges of the facts of this case. And in your  
16 evaluation of an exculpatory statement shown to be false, you  
17 may consider that there may be reasons fully consistent with  
18 innocence that could cause a person to give a false statement  
19 showing their innocence. Fear of law enforcement, reluctance to  
20 become involved, and simple mistake may cause a person who has  
21 committed no crime to give such statement or explanation.

22 Now, an indictment, as I told you at the outset, is but  
23 a formal method used by the Government to accuse a defendant of  
24 a crime. It is not evidence of any kind against the defendant.  
25 The defendant is presumed to be innocent of the crime or crimes

1 charged. Even though this indictment has been returned against  
2 the defendant, the defendant begins the trial with absolutely no  
3 evidence against him.

4 The defendant has pled not guilty to the indictment,  
5 and therefore denies that he is guilty of the charges.

6 Now, the defendant is not on trial for any act or  
7 conduct not specifically charged in the indictment, and a  
8 separate crime is charged in each count of the indictment. Each  
9 charge and the evidence pertaining to it should be considered  
10 separately by the jury. The fact that you may find the  
11 defendant guilty or not guilty as to one of the charges --  
12 offenses charged should not control your verdict as to the other  
13 offenses charged.

14 The indictment charges the offenses alleged -- or were  
15 committed on or about a certain date. Although it is necessary  
16 for the Government to prove beyond a reasonable doubt that the  
17 offenses were committed on a date reasonably near the dates  
18 alleged in the indictment, it is not necessary for the  
19 Government to prove that the offenses were committed precisely  
20 on the dates charged.

21 The Court instructs the jury that although the  
22 indictment may charge the defendant with committing an offense  
23 in several ways, using conjunctive language -- that is, "and" --  
24 it is sufficient if the Government proves the offense in the  
25 disjunctive -- that is, "or." That is to say, a jury may

1 convict on a unanimous finding of any of the alternative acts  
2 charged in the indictment.

3 For example, in -- Count 1 of the indictment charges  
4 that defendant attempted to and did employ, use, persuade,  
5 induce, entice, and coerce a minor. And there are other  
6 examples of charging in the conjunctive or disjunctive in the  
7 indictment. In order to prove that the defendant -- to prove  
8 the defendant guilty of a particular offense, the Government  
9 does not need to prove that the defendant did all of the  
10 alternative acts, but only that he did one of the alternative  
11 acts in the example above.

12 The Government would need to prove beyond a reasonable  
13 doubt that the defendant attempted to or did employ or use or  
14 persuade or induce or entice or coerce.

15 The intent of a person, or the knowledge that a person  
16 possesses at any given time, may not ordinarily be proved  
17 directly because there's no way of directly scrutinizing the  
18 workings of the human mind. In determining the issue of what a  
19 person knew or what a person intended at a particular time, you  
20 may consider any statements made or acts done or omitted by that  
21 person, and all other facts and circumstances received in  
22 evidence which may aid in your determination of that person's  
23 knowledge or intent. You may infer, but you are certainly not  
24 required to infer, that a person intends the natural and  
25 probable consequences of acts knowingly done or knowingly

1 omitted.

2 It's entirely up to you, however, to decide what facts  
3 to find from the evidence received during this trial.

4 Now, Count 1 through 5 of the indictment charges that  
5 on various dates listed below -- and I'll tell you what they  
6 are -- within the Eastern District of Virginia, Zackary Ellis  
7 Sanders attempted to and did knowingly employ, use, persuade,  
8 induce, entice, and coerce five minors, Minor Victim 1 through  
9 5, to engage in sexually explicit conduct for the purpose of  
10 producing a visual depiction of such conduct, and he knew and  
11 had reason to know that the visual depiction would be  
12 transported or transmitted using any means and facility of  
13 interstate and foreign commerce, and in and affecting commerce  
14 and foreign interstate and foreign commerce, or mailed, and that  
15 visual depiction was produced and transmitted using materials  
16 that had been mailed, shipped, and transported in and affecting  
17 interstate and foreign commerce by any means, and that visual  
18 depiction had been transported and transmitted using any means  
19 or facility of interstate commerce, and affecting interstate and  
20 foreign commerce by any means, including by computer; to wit, a  
21 digital visual depiction of different minors engaged in sexually  
22 explicit conduct on the following dates:

23 For Count 1, between on or about November 20, 2019, and  
24 on or about November 25, 2019. That's Minor Victim 1.

25 For Count 2, between on or about November 10, 2019, and

1 on or about November 14th -- from the 10th to the 14th -- 2019.  
2 That's Minor Victim 2.

3 Count 3, between on or about September 17, 2017, and on  
4 or about April 4, 2018. That's Minor Victim 3.

5 Count 4, between on or about November 29, 2017, and on  
6 or about December 11, 2017. That's Minor Victim 4.

7 And between on or about May 8th, 2017, and on or about  
8 October 21st, 2017. That's Minor Victim 5.

9 Now, Section 2251(a) of Title 18, which is the statute  
10 that is alleged to have been violated in Count 1, the U.S. Code  
11 at that point provides in relevant part that any person who  
12 employs, uses, persuades, induces, entices, or coerces, or  
13 attempts to employ -- let me begin again.

14 Any person who employs, uses, persuades, induces,  
15 entices, or coerces, or attempts to employ, use, persuade,  
16 induce, entice, or coerce any minor to engage in any sexually  
17 explicit conduct for the purpose of producing any visual  
18 depiction of such conduct shall be guilty of a federal crime if  
19 such person transported or transmitted, using any means or  
20 facility of interstate or foreign commerce, or in or affecting  
21 interstate or foreign commerce or mail, if that visual depiction  
22 was produced or transmitted using material that had been --  
23 materials that had been mailed, shipped, or transported in or  
24 affecting interstate or foreign commerce by any means, including  
25 by computer, or such visual depiction has actually been

1 transported or transmitted using any means or facility of  
2 interstate or foreign commerce, or in or affecting interstate or  
3 foreign commerce or mail.

4 Now, in order to prove the defendant guilty of  
5 producing child pornography, as charged in Count 1, the  
6 Government must prove the following elements beyond a reasonable  
7 doubt:

8 First, that at the time of the alleged incident,  
9 Minor Victims 1, 2, 3, 4, and 5, the alleged victims named in  
10 Count 1 through 5 of the indictment, were under the age of 18.

11 Two -- second element. Two, that the defendant  
12 attempted to and did knowingly employ, use, or persuade, or  
13 induce or entice or coerce Minor Victims 1, 2, 3, 4, and 5 to  
14 engage in sexually explicit conduct for the purpose of producing  
15 a visual depiction of that conduct.

16 And three, the visual depiction was produced using  
17 materials that had been mailed, shipped, or transported in or  
18 affecting interstate or foreign commerce by any means, or such  
19 visual depiction had actually been transported or transmitted  
20 using any means or facility of interstate or foreign commerce,  
21 or in or affecting interstate or foreign commerce or mail.

22 So with respect to the first element that the  
23 Government must prove beyond a reasonable doubt, is that  
24 Minor Victims 1, 2, 3, and 4 and 5 were each less than 18 years  
25 old at the time of the acts alleged in the indictment.

1           The Government does not have to prove that the  
2       defendant knew that the Minor Victims 1, 2, 3, 4, and 5 were  
3       less than 18 years old. Moreover, defendant's belief,  
4       reasonable or not, that Minor Victims 1, 2, 3, 4, and 5 were  
5       18 years or older is irrelevant and not a defense to the crime  
6       charged.

7           I therefore instruct you that if you find that  
8       Minor Victims 1, 2, 3, 4, and 5 were, in fact, less than  
9       18 years old at the time of the acts alleged in the indictment,  
10      then that is sufficient to satisfy the first element of the  
11      offense.

12          The second element of the offense that the Government  
13      must prove beyond a reasonable doubt is that the defendant  
14      employed or used or persuaded or induced or enticed or coerced  
15      Minor Victims 1, 2, 3, 4, and 5 to take part in sexually  
16      explicit conduct for the purpose of producing a visual depiction  
17      of that conduct. A visual depiction includes any photograph,  
18      film, video, or picture, including undeveloped film and  
19      videotape and data stored on a computer disk, or by electronic  
20      means that is capable of conversion into a visual image whether  
21      or not stored in a permanent format.

22          The term "producing" means producing, directing,  
23      manufacturing, issuing, publishing, or advertising. The phrase  
24      "purpose of producing" means that the defendant had the specific  
25      intent to cause the production of a video depiction. The facts

1 must support the conclusion that the defendant engaged in  
2 conduct in order to produce a visual depiction of sexually  
3 explicit conduct.

4 While the image itself can be probative of the  
5 defendant's intent, it cannot be the only evidence.

6 In deciding whether the Government has proven that the  
7 defendant acted for the purpose of producing a visual depiction  
8 of sexually explicit conduct, you may consider all of the  
9 evidence concerning the defendant's conduct. The production of  
10 a visual depiction of sexually explicit conduct must have been a  
11 significant or motivating purpose of the defendant, and not  
12 merely incidental to engaging in the sexually explicit conduct.

13 It is not necessary, however, for the Government to  
14 prove that the defendant was single-minded in his purpose or  
15 that the production of a visual depiction of sexually explicit  
16 conduct was the defendant's sole or primary purpose. Rather, it  
17 is sufficient for the Government to prove that the defendant had  
18 a significant or motivating purpose of producing a visual  
19 depiction of sexually explicit conduct when he employed or used  
20 or persuaded or induced or enticed or coerced Minor Victims 1  
21 through 5 to engage in sexually explicit conduct.

22 The third element that the Government must prove beyond  
23 a reasonable doubt is that the visual depiction was produced  
24 using materials that had been mailed or transported in  
25 interstate or foreign commerce and that the defendant knew or



1 had reason to know that the visual depiction had been  
2 transported or transmitted using any means and facility of  
3 interstate or foreign commerce or that the visual depiction was  
4 actually transported or transmitted using any means or facility  
5 of interstate or foreign commerce.

6 Simply stated, the phrase "transported in interstate or  
7 foreign commerce" means that the materials used to produce the  
8 visual depiction had previously moved from one state to another  
9 or between the United States and another country. If you find,  
10 for example, that a cellular telephone or computer was used to  
11 produce the visual depiction in question and that the cellular  
12 telephone was manufactured or assembled outside the Commonwealth  
13 of Virginia, then that is sufficient to satisfy this element.

14 The Government does not have to prove that the  
15 defendant personally transported the cellular telephone or  
16 computer across a state line or into the United States or that  
17 the defendant knew that the cellular telephone or computer had  
18 previously crossed state line or previously had been imported  
19 into the United States.

20 Furthermore, because of the interstate nature of the  
21 internet, if you find beyond a reasonable doubt that the  
22 defendant used the internet in receiving or possessing the  
23 produced visual depiction of a minor engaged in sexually  
24 explicit conduct, then that visual depiction traveled in  
25 interstate commerce. It does not matter whether the computer --

1 it does not matter whether the computer that -- Counsel, pick up  
2 your earphones. I think I missed a verb here.

3 (BENCH CONFERENCE ON THE RECORD.)

4 THE COURT: Mr. Schlessinger, you were the one who did  
5 instructions?

6 MR. SCHLESSINGER: Yes, Your Honor.

7 THE COURT: All right. And Ms. Chong-Smith, you were  
8 the one who did instructions, I believe.

9 MS. GINSBERG: She is not here, Your Honor.

10 THE COURT: All right. Ms. Ginsberg, you will stand in  
11 for her.

12 MS. GINSBERG: Yes.

13 THE COURT: You can see that at the bottom of page 32  
14 there seems to be a word missing. Mr. Schlessinger, what do you  
15 think it should be? It says: It does not matter whether the  
16 visual depiction the defendant was -- I see. "It does not  
17 matter whether the computer" -- and then it goes on. What  
18 should that be?

19 MR. SCHLESSINGER: Your Honor, I believe it should be,  
20 "It does not matter whether the computer that the visual  
21 depiction was transported to was in Virginia."

22 THE COURT: "It does not matter whether the" -- go  
23 ahead. What did you say?

24 MR. SCHLESSINGER: "Whether the computer that the  
25 visual depiction was transported to was in Virginia."

1           That's what does not matter.

2           THE COURT: So the only thing that's added is the word  
3 "that"?

4           MR. SCHLESSINGER: The word "the" in between "that" and  
5 "visual."

6           THE COURT: So read me again how you think it should  
7 be, Mr. Schlessinger.

8           MR. SCHLESSINGER: "It does not matter whether the  
9 computer that the visual depiction was transported to was in  
10 Virginia."

11          THE COURT: All right. Ms. Ginsberg?

12          MS. GINSBERG: We don't object.

13          THE COURT: All right. Thank you.

14          (END BENCH CONFERENCE.)

15          THE COURT: All right. Let me begin with the sentence  
16 before that. Furthermore, because of the interstate nature of  
17 the internet, if you find beyond a reasonable doubt that the  
18 defendant used the internet in receiving or possessing the  
19 produced visual depiction of a minor engaged in sexually  
20 explicit conduct, then that visual depiction traveled in  
21 interstate commerce.

22               It does not matter whether the computer that the visual  
23 depiction was transported to was in Virginia and it does not  
24 matter whether the visual depiction the defendant received or  
25 possessed was transmitted from within Virginia. If the internet

1 was used in moving the visual depiction, then it traveled in  
2 interstate commerce.

3 Now, for purposes of the charges contained here, a  
4 minor is defined as any person under the age of 18. And I  
5 instruct you that, under federal law, which is the sole law  
6 governing in this case, that a minor cannot consent to the  
7 production of child pornography. Accordingly, any argument  
8 regarding a minor's consent to the production of child  
9 pornography is irrelevant in reaching your verdict.

10 The Government has -- the Government only has to prove  
11 venue -- that is, the place where the underlying events  
12 occurred -- by a preponderance of the evidence. This means  
13 that, with respect to venue, the Government only has to convince  
14 you that it is more likely so than not so that part, if not all,  
15 of the offense took place or occurred in the Eastern District of  
16 Virginia.

17 And the Eastern District of Virginia includes the  
18 eastern half of the state, including Northern Virginia,  
19 extending down to and including Richmond, Fredericksburg,  
20 Tidewater, Norfolk, and Newport News, and extending to the west,  
21 but not as far as Charlottesville. Charlottesville is not in  
22 the Eastern District of Virginia.

23 Now, Counts 6 through 11 of the indictment charge --  
24 they charge that in separate instances on or about the dates set  
25 forth -- and I'll tell you the dates -- within the Eastern

1 District of Virginia, the defendant, Zackary Ellis Sanders,  
2 attempted to and did receive visual depiction using any means  
3 and facility of interstate and foreign commerce that had been  
4 mailed and had been shipped or transported in and affecting  
5 interstate and foreign commerce, and which had -- and which  
6 contained materials which had been mailed or so shipped and  
7 transported by any means, including by computer, and the  
8 production of such visual depiction involved the use of a minor  
9 engaging in sexually explicit conduct, and the visual depiction  
10 was of such conduct; to wit, digital visual depictions of  
11 different minors engaged in sexually explicit conduct on the  
12 following dates:

13 For Count 6, on or about January 16, 2020,  
14 Minor Victim 6; Count 7, between on or about November 20, 2019  
15 and on or about November 25th, 2019, Minor Victim 1; Count 8,  
16 between on or about November 10, 2019, and on or about  
17 November 14, 2019 -- that's Minor Victim 2; Count 9, between on  
18 or about September 17, 2017, and on or about April 14, 2018 --  
19 that's Minor Victim 3; Count 10, between on or about  
20 November 29, 2017, and on or about December 11, 2017 -- that's  
21 Minor Victim 4; and Count 11, between on or about September 15,  
22 2017, and on or about October 21, 2017 -- that's  
23 Minor Victim 5 -- all in violation of Section 2252(a)(2) of  
24 Title 18, which provides in relevant part as follows:

25 Any person who knowingly receives or attempts to

1 receive any visual depiction using any means or facility of  
2 interstate or foreign commerce or that has been mailed or has  
3 been shipped or transported in or affecting interstate or  
4 foreign commerce, or which contains materials which have been  
5 mailed or so shipped or transported by any means, including by  
6 computer, or knowingly reproduces any visual depiction for  
7 distribution using any means or facility of interstate or  
8 foreign commerce or in and affecting interstate or foreign  
9 commerce or through the mails, if, A, the producing of such  
10 visual depiction involves the use of a minor engaging in  
11 sexually explicit conduct, and, B, such visual depiction is of  
12 such conduct, shall be guilty of a federal crime.

13 So in order to prove the defendant guilty of receiving  
14 child pornography, as charged in Counts 6 through 11 of the  
15 indictment, the Government must prove the following elements  
16 beyond a reasonable doubt:

17 First, that the defendant knowingly received or  
18 attempted to receive any visual depiction.

19 Two, that defendant received or attempted to receive  
20 the visual depiction using any means or facility of interstate  
21 or foreign commerce, or that the visual depiction had been  
22 shipped or transported in or affecting interstate or foreign  
23 commerce, or the visual depiction contained materials that had  
24 been made or shipped or transported in or affecting interstate  
25 or foreign commerce.

1           Third, that the producing of the visual depiction  
2 involved using a minor engaged in sexually explicit conduct.

3           Four, that the visual depiction is of a minor engaged  
4 in sexually explicit conduct.

5           And five, that the defendant knew that the visual  
6 depiction involved the use of a minor engaging in sexually  
7 explicit conduct.

8           The Government has alleged that the defendant either  
9 produced or attempted to produce child pornography as charged in  
10 Counts 1 through 5 of the indictment. In addition, the  
11 Government has alleged that the defendant either received or  
12 attempted to receive child pornography as charged in Counts 6  
13 through 11 of the indictment. So in order to sustain its burden  
14 of proof for the crime of attempt, as charged in these counts of  
15 the indictment, the Government must show the following two  
16 essential elements beyond a reasonable doubt:

17           First, that the defendant knowingly took a substantial  
18 step toward committing the offense.

19           And two, that defendant had the intent to commit the  
20 offense.

21           The difference between conduct which violates the law  
22 and conduct which does not violate the law in this regard -- and  
23 I'm talking about attempts -- is what is referred to as a  
24 substantial step towards the commission of a crime.

25           The substantial step must be an act that strongly

1 corroborates that the defendant intended to carry out the  
2 offense. A defendant may be found guilty of attempting to  
3 commit a federal crime even though no one actually did all of  
4 the acts necessary in order to commit that crime. A defendant  
5 may not be found guilty of attempting to commit any crime,  
6 however, merely by thinking about it or even by making some plan  
7 or other preparation for the commission of a crime.

8 In order to find the defendant guilty of committing the  
9 crime or attempted -- crime of attempted production of child  
10 pornography and attempted receipt of child pornography, the  
11 Government must prove beyond a reasonable doubt that the mental  
12 processes of the defendant passed from the stage of thinking  
13 about the crime to actually intending to commit that crime, and  
14 that the physical process of the defendant went beyond and  
15 passed from the stage of mere preparation to some form -- some  
16 firm, clear, and undeniable action to accomplish that intent.

17 Count 12 of the indictment charges that in or about  
18 February 2020, within the Eastern District of Virginia, the  
19 defendant, Zackary Ellis Sanders, knowingly possessed at least  
20 one matter which contained a visual depiction that had been  
21 mailed or had been shipped or transported using any means or  
22 facility of interstate or foreign commerce, or in or affecting  
23 interstate or foreign commerce, or which was produced using  
24 materials that had -- which had been mailed or so shipped or  
25 transported by any means, including by computer, and that the



1 production of such visual depiction involved the use of a minor  
2 engaging in sexually explicit conduct, and such visual depiction  
3 was of such conduct; to wit, digital visual depictions of  
4 minors, including prepubescent minors, and minors who had not  
5 attained the age of 12 years of age engaged in sexually explicit  
6 conduct stored on a SanDisk Cruzer Edge thumb drive, an HP  
7 Elitebook 755 laptop, a Lexar thumb drive, an HP laptop serial  
8 number 5CH11262Y5Y, and an HP laptop, serial number CMF8255WHS.

9 Section 2255(a)(4) of Title 18 of the U.S. Code  
10 provides, in relevant part, that any person who knowingly  
11 possesses one or more books, magazines, periodicals, films,  
12 videotapes, or other matter which contain any visual depiction  
13 that has been mailed or has been shipped or transported using  
14 any means or facility of interstate or foreign commerce, or in  
15 or affecting interstate or foreign commerce, or which was  
16 produced using materials which have been made [sic] or so  
17 shipped or transported by any means, including by computer, if,  
18 one, the producing of such visual depiction involves the use of  
19 a minor engaging in sexually explicit conduct; and two, such  
20 visual depiction is of such conduct, shall be guilty of a  
21 federal crime.

22 Now, in order for the Government to prove the defendant  
23 guilty of possessing child pornography, as charged in Count 12  
24 of the indictment, the Government must prove the following  
25 elements beyond a reasonable doubt:

1           First, that the defendant knowingly possessed a matter  
2           which contained any visual depiction.

3           Two, that the producing of such visual depiction  
4           involved the use of a minor engaging in sexually explicit  
5           conduct, and the visual depiction is of such sexually explicit  
6           conduct.

7           And third, that the matter which contained the visual  
8           depiction involving the use of a minor engaging in sexually  
9           explicit conduct had been transported using any means or  
10          facility of interstate or foreign commerce, or in or affecting  
11          interstate or foreign commerce by any means, including by  
12          computer, or the matter which contained a visual depiction  
13          involving the use of a minor engaging in sexually explicit  
14          conduct was produced using materials which had been mailed or so  
15          shipped or transported by any means, including by computer.

16          And four, the fourth, that the defendant knew that the  
17          visual depiction involved the use of a minor engaging in  
18          sexually explicit conduct.

19          Now I'm going to define a number of terms for you. I  
20          will define the terms "visual depiction," "computer," "minor,"  
21          "sexually explicit conduct," and "lascivious exhibition," which  
22          apply to your deliberations and to the indictment.

23          The term "visual depiction" includes images, pictures,  
24          videos, undeveloped film, and video data stored on a computer  
25          disk or by electronic means which is capable of conversion into

1 a visual image, and data which is capable of conversion into a  
2 visual image that has been transmitted by any means, whether or  
3 not stored in permanent format.

4 Computer -- the term "computer" means any electronic,  
5 magnetic, optical, electrochemical, or other high-speed data  
6 processing device performing logical, arithmetic or storage  
7 functions and includes any data storage facility or  
8 communications facility directly related to or operating in  
9 conjunction with such a device.

10 "Minor," as I've told you, I think, before, means any  
11 person under the age of 18 years.

12 The term "sexually explicit conduct" means actual or  
13 simulated, one, sexual intercourse involving genital-genital,  
14 oral-genital, and [sic] genital, or oral-anal, whether between  
15 persons of the same or opposite sex.

16 Two, bestiality.

17 Three, masturbation.

18 Four, sadistic or masochistic abuse.

19 And five, the lascivious exhibition of the genitals or  
20 pubic area of any person.

21 For the visual depiction of an exhibition of the  
22 genitals or pubic area of a minor to be considered sexually  
23 explicit conduct, the exhibition must be lascivious. Whether a  
24 picture or image of the genitals or pubic area constitutes such  
25 lascivious exhibition requires a consideration of the overall

1 context of the material. In determining whether an exhibition  
2 of the genitals or pubic area of a minor is lascivious, you may  
3 consider the following factors:

4 Whether the focal point of the visual depiction is on  
5 the minor's genitals or pubic area; two, whether the setting or  
6 visual depiction is sexually suggestive -- that is, a place or  
7 pose generally associated with sexual activity; whether the  
8 minor is depicted in an unnatural pose or in inappropriate  
9 attire considering the age of the minor; whether the minor is  
10 fully or partially clothed or nude; whether the visual depiction  
11 suggests coitus or a willingness to engage in sexual activity;  
12 and whether the visual depiction is intended or designed to  
13 elicit a sexual response in the viewer.

14 Whether -- a picture or image need not involve all of  
15 these factors to be lascivious exhibition of the genitals or  
16 pubic area. It is for you to decide the weight or lack of  
17 weight to be given to any of these factors. Ultimately, you  
18 must determine whether the visual depiction is lascivious based  
19 on its overall content.

20 The Government must prove beyond a reasonable doubt  
21 that the visual depiction was distributed or attempted -- or an  
22 attempt was made to distribute it in one of three ways:

23 First, the visual depiction was distributed by any  
24 means or facility of interstate or foreign commerce.

25 Second, that the visual depiction had been shipped or

1 transported in or affecting interstate or foreign commerce.

2 Or third, that the visual depiction contained materials  
3 which had been mailed or shipped or transported in and affecting  
4 interstate commerce by any means, including by computer.

5 The term "means or facility of interstate commerce"  
6 includes any electronic devices, program, including social media  
7 applications connected to the internet and capable of sending  
8 information over the internet.

9 The phrase "affecting interstate or foreign commerce"  
10 means having at least a minimal effect upon interstate or  
11 foreign commerce.

12 The Government is not required to prove that the  
13 defendant knew that any means or facility of interstate commerce  
14 had been or would be used when he received or distributed the  
15 visual depiction.

16 The Government must prove beyond a reasonable doubt  
17 that the production of the visual depiction involved the use of  
18 a minor engaging in sexually explicit conduct and portrays that  
19 minor engaged in that conduct. The visual depiction must be of  
20 a real person under the age of 18 engaging in sexually explicit  
21 conduct.

22 The Government does not have to prove the identity of  
23 the minor or the exact age of the minor. You may consider all  
24 of the evidence admitted, including your viewing of the person  
25 depicted in the video or image, in determining whether the image

1 portrayed an actual person under the age of 18 engaging in  
2 sexually explicit conduct.

3 The Government must prove beyond a reasonable doubt  
4 that the defendant knew both that the production of the visual  
5 depiction involved the use of a minor engaging in sexually  
6 explicit conduct and that it portrayed minors engaged in that  
7 conduct. An act is done knowingly when it is done voluntarily  
8 and intentionally, and not because of accident, mistake, or some  
9 other innocent reason.

10 In this case, "knowingly" refers to an awareness of the  
11 sexually explicit nature of the material and to the knowledge  
12 that the visual depictions were, in fact, actual minors engaging  
13 in that sexually explicit conduct.

14 The Government must show that the defendant had  
15 knowledge of the general nature of the contents of the material.  
16 The defendant need not have specific knowledge as to the  
17 identity of -- the identity or actual age of the underage  
18 performer, but the defendant must have knowledge or an awareness  
19 that the material contained a visual depiction of a minor  
20 engaging in sexually explicit conduct.

21 Such knowledge may be shown by direct or circumstantial  
22 evidence or both.

23 Eyewitness testimony of the defendant's viewing of the  
24 material is not necessary to prove the awareness of its  
25 contents. The circumstances may warrant an inference that he

1 was aware of what the material depicts. Furthermore,  
2 defendant's belief as to the legality or illegality of the  
3 material is irrelevant.

4 Now, intent and motive are different concepts and  
5 should never be confused. Motive is what prompts a person to  
6 act or to fail to act; that is, what prompts a person to act or  
7 fail to act. Intent refers to the state of mind with which the  
8 act is done or omitted. Personal advancement and financial gain  
9 are -- for example, are two well-recognized motives of human  
10 conduct. These praiseworthy motives -- they may be  
11 praiseworthy -- however, may prompt one person to voluntary acts  
12 of good while prompting another person to voluntary acts of  
13 crime.

14 Good motive alone is never a defense where the act done  
15 or omitted is a crime. The motive of the person is, therefore,  
16 immaterial except insofar as evidence of motive may aid in  
17 determining the state of mind or intent of the defendant.

18 Now, in the course of the trial you were permitted to  
19 take notes. You are permitted to use your notes as you  
20 deliberate, but your notes should be used only as memory aids.  
21 You should not give your notes precedence over your independent  
22 recollection of the evidence. Notes are not entitled to any  
23 greater weight than the recollection or impression of each juror  
24 as to what the testimony may have been.

25 Now, you may not base your verdict in any way upon

1 sympathy, bias, guesswork, or speculation. Your verdict must be  
2 based solely on the evidence and the Court's instructions.

3 Your verdict must represent the considered judgment of  
4 each juror. In other words, in order to return a verdict, it is  
5 necessary that each juror agree thereto. Your verdict must be  
6 unanimous.

7 Now, it's your duty as jurors to consult with one  
8 another and to deliberate with a view to reaching an agreement  
9 if you can do so without violence to your individual judgment.  
10 You must each decide the case for yourself, but only after an  
11 impartial consideration of the evidence in the case with your  
12 fellow jurors.

13 In the course of your deliberations, do not hesitate to  
14 reexamine your own views and to change your opinion if convinced  
15 it is erroneous. But do not surrender your honest conviction as  
16 to weight or effect of evidence solely because of the opinion of  
17 your fellow jurors or for the mere purpose of returning a  
18 verdict. Remember at all times you are not partisans; you are  
19 judges, judges of the facts. Your sole interest is to seek the  
20 truth from the evidence in the case.

21 The punishment provided by law for the offenses charged  
22 in the indictment is a matter exclusively within the province of  
23 the Court and should never be considered by the jury in any way  
24 in arriving at an impartial verdict as to the offenses charged.

25 Now, during your deliberations you must not communicate



1 with or provide any information to anyone by any means,  
2 electronic or otherwise, about this case. You may not use any  
3 electronic device or media, such as a telephone, cell phone,  
4 smart phone, iPhone, BlackBerry, or computer, the internet or  
5 any internet service or any text or instant messaging service or  
6 any internet chat room, blog, or website such as Facebook,  
7 Myspace, LinkedIn, YouTube, or Twitter, to communicate with  
8 anyone any information about this case, or to conduct any  
9 research about this case until I accept your verdict.

10 Now, when you retire to the jury room, you'll elect --  
11 or select one of your number to act as your foreperson. The  
12 foreperson will preside over your deliberations and will be your  
13 spokesperson here in court. Forms of the verdict have been  
14 prepared for your convenience.

15 May I have that, please. Thank you.

16 And I'm going to explain the verdict form to you now.  
17 I've had a hard time seeing all of you.

18 The verdict form is a three-page form, and in that form  
19 is the following: First, there is the style of the case at the  
20 top. The title is verdict form. And then it says, Count 1:  
21 With respect to Count 1, production of child pornography, we,  
22 the jury, find the defendant, Zackary Ellis Sanders, either not  
23 guilty or guilty. So you are to reach a verdict and put down  
24 whether you find him not guilty or guilty.

25 And then it goes to Count 2: With respect to Count 2,

1 production of child pornography, we, the jury, find the  
2 defendant, Zackary Ellis Sanders, not guilty or guilty. You'll  
3 remember that each of the counts is a different alleged minor  
4 victim.

5 And then there's Count 3, and exactly the same question  
6 is asked as to Count 3 and as to Count 4 and as to Count 5.

7 Now, Count 6, the question then is: With respect to  
8 Count 6, receipt of child pornography, we, the jury, find the  
9 defendant either not guilty or guilty, as you may find. And 7,  
10 8, 9, and 10 are all the different counts of receipt of child  
11 pornography. And 11 as well.

12 In other words, 6, 7, 8, 9, 10, and 11 are the receipt  
13 counts, and you are asked to mark here whether you find the  
14 defendant not guilty or guilty.

15 And then, for Count 12, it says, with respect to  
16 Count 12, possession of child pornography, we, the jury, find  
17 the defendant, Zackary Ellis Sanders, either not guilty or  
18 guilty as you may find. There's an additional question asked  
19 with respect to Count 12. If your verdict is not guilty as to  
20 Count 12, you don't have to answer that further question. If  
21 your finding is that the defendant is guilty as to Count 12,  
22 then you have to answer the following question, and that's  
23 explicit here on the form: Did a visual depiction involved in  
24 the offense charged in Count 12 involve a prepubescent minor or  
25 a minor who had not attained the age of 12 years?

1           And there's a place for you to mark no or yes. And  
2 again, you don't have to answer that question if you find the  
3 defendant not guilty of Count 12. But if you find the defendant  
4 guilty of Count 12, you must answer that question.

5           And after that, there's a statement that says: So say  
6 we all this -- whatever day you reach your verdict. What is  
7 today? Today is the 27th -- 27th, but you may deliberate as  
8 long as or as little as you like. So whatever that date is, it  
9 will be.

10           And then your foreperson signs it and then you'll  
11 return with your verdict to the courtroom. So it's a three-page  
12 form, and I have reviewed it all with you.

13           Now, it's proper to add the caution that nothing said  
14 in the instructions I've given you and nothing in my form of the  
15 verdict prepared for your convenience is meant to suggest or to  
16 convey in any way or manner any intimation as to what verdict I  
17 think you should find. What your verdict shall be is your sole  
18 and exclusive duty and responsibility.

19           Now, if it becomes necessary during your deliberations  
20 to communicate with the Court, you may send a note by the court  
21 security officer who will be right outside.

22           They're going to deliberate on this floor, aren't they?

23           COURT SECURITY OFFICER: Yes, sir.

24           THE COURT: He will be right outside the door. And the  
25 note should be signed by your foreperson or by one or more

1 members of the jury. No member of the jury should ever attempt  
2 to communicate with the Court by any means other than a signed  
3 writing, and the Court will not communicate with any member of  
4 the jury on any subject touching the merits of the case  
5 otherwise than in writing or orally here in open court.

6 I may communicate with you for other reasons such as  
7 how long you wish to continue to deliberate. I've had other  
8 situations. If it gets too hot in there, too cold in there,  
9 those sorts of things I will communicate with you other than by  
10 a signed writing or orally here in open court.

11 Now, you'll note from the oath about to be taken by the  
12 court security officer that he too, as well as all other  
13 persons, are forbidden to communicate in any way or manner with  
14 any member of the jury on any subject touching the merits of the  
15 case.

16 And bear in mind that you are never to reveal to any  
17 person, not even to the Court, not even to me, how the jury  
18 stands, numerically or otherwise, on the questions before you  
19 until after you have reached your unanimous verdict.

20 All right. You may administer the oath to the court  
21 security officer.

22 COURTROOM CLERK: You shall keep this jury together,  
23 not have any communication with them, nor permit any other to  
24 communicate with them touching this trial, so help you God?

25 COURT SECURITY OFFICER: I shall.

1 THE COURT: All right. Now, as I said, the exhibits  
2 will be in there, but it's going to take us a few minutes to get  
3 the exhibits in there. Unless that's already happened.

4 COURTROOM CLERK: Yes, Judge.

5 THE COURT: Would that I could be as efficient as those  
6 of my colleagues.

7 But in any event, once all of you are there and all the  
8 exhibits are in there and the verdict form and the tape  
9 recorder, because you will not have a written version of the  
10 instructions I've given you, but you will have a tape recording  
11 of it. You're not required to listen to the tape again, but  
12 it's there if you want to, if you think that's important.  
13 That's up to you. And that will be provided to you. The -- I  
14 don't have a written version, and I prefer to do it this way.  
15 The tape recorder will be there.

16 Now, once all of that is in the room and the 12 of you  
17 are in the room and the door closes, then you may begin your  
18 deliberations. Now, you may tell the court security officer at  
19 any time if you want to take a recess, but remember this: If  
20 one of you -- if any one of you, or more, leave the room to go  
21 use the head -- bathroom, or for some other reason are absent  
22 temporarily, cease your deliberations. You can only deliberate  
23 if all of you are there and the door is closed because all of  
24 you have to know what everyone else says. So if one of you  
25 leaves and there's a discussion, that person who left hasn't

1 heard all of that, and that person must hear everything.

2 Now, put on your earphones, please.

3 (BENCH CONFERENCE ON THE RECORD.)

4 THE COURT: Can you hear me?

5 MR. SCHLESSINGER: Yes, Your Honor.

6 MS. GINSBERG: Yes, Your Honor.

7 THE COURT: All right. Has the jury been fully and  
8 fairly instructed in accordance with the instructions  
9 conference, Mr. Schlessinger?

10 MR. SCHLESSINGER: Yes, Your Honor.

11 THE COURT: Ms. Ginsberg?

12 MS. GINSBERG: Yes, Your Honor. But I do have an  
13 objection to the verdict form.

14 THE COURT: Too late.

15 MS. GINSBERG: Is Your Honor going to send the  
16 indictment into the jury room?

17 THE COURT: I hadn't planned to. Do you want it?

18 MS. GINSBERG: No, I don't.

19 THE COURT: All right. I don't plan to send it to  
20 them.

21 MS. GINSBERG: The reason for my objection, Your Honor,  
22 is I think the verdict form, without reference to the individual  
23 images and the individual victims, is going to be totally  
24 confusing to the jury.

25 THE COURT: All right. Your objection comes too late.

1 I don't think it's a sound objection in any event. They'll have  
2 to use their recollections to match images with what was done,  
3 and the Government made clear which images it said were in  
4 effect for -- or were operative for each count.

5 So -- and you don't want the indictment sent back, and  
6 I will accommodate that request and I won't send the indictment  
7 back. But I'm not going to change the verdict form.

8 MS. GINSBERG: I understand. Your Honor, one other  
9 request. The phone, the cell phone, is an exhibit which the  
10 Government moved into evidence. I believe the appellate court  
11 has ruled that the phone should be provided for the jurors the  
12 same way a tape recorder is going to be provided for them to  
13 listen to any portion of the recorded chats or recorded  
14 testimony. I've asked the Government if they have a power cord  
15 and I don't think they have one present in the courtroom.

16 THE COURT: Mr. Schlessinger, she wants to give the  
17 jury the ability to plug in to the phone. What's your view?

18 MR. SCHLESSINGER: Your Honor, that's not appropriate.  
19 It was not a part of any exhibit that's been admitted.  
20 Moreover, unlike the computer that's going to be provided to the  
21 jurors in order to play the CDs, which is incapable of altering  
22 the CDs that were admitted as exhibits, the power cord  
23 inherently will and does change the condition and the contents  
24 of the phone that's been admitted as an exhibit.

25 So it's not appropriate to be admitted. At an absolute

1 minimum, I don't think --

2 THE COURT: Well, the phone itself is admitted.

3 MR. SCHLESSINGER: It is.

4 THE COURT: But not a device to hook in to the phone.

5 MR. SCHLESSINGER: That's correct, Your Honor.

6 THE COURT: All right. Ms. Ginsberg?

7 MS. GINSBERG: Your Honor, it was for that reason that  
8 I asked yesterday that the entire transcript of the chats be  
9 admitted. The Government objected to that. They did  
10 acknowledge, and the Court has acknowledged, that the phone has  
11 been admitted as a Government exhibit at their request, and that  
12 being the case, it is an exhibit, the jury is entitled to have  
13 access to the contents. And if the Government is concerned  
14 about altering the data on the phone, they should have come up  
15 with some other mechanism for the jury to be able to access the  
16 contents of an exhibit which they have admitted.

17 THE COURT: All right. Go ahead, Ms. Ginsberg.

18 MS. GINSBERG: That's my argument, Your Honor.

19 THE COURT: All right. Thank you.

20 Mr. Schlessinger, last chance.

21 MR. SCHLESSINGER: Once again, Your Honor, we admitted  
22 the phone itself, which the jury may fully examine. We have not  
23 admitted a power cord that goes along with the phone, and the  
24 jury should not have access to that, which is going to alter the  
25 evidence, and which also they have indicated no request for at



1 this time.

2 So at an absolute minimum, it would be entirely  
3 premature to send it back and send the signal that the jury  
4 should plug it in or examine it in that way.

5 THE COURT: Now, I did, did I not, indicate to the  
6 defendant, Ms. Ginsberg, that you were free to introduce any  
7 other part of that -- those conversations? Am I correct?

8 MS. GINSBERG: Yes, Your Honor. But the phone was  
9 admitted.

10 THE COURT: Yes, you've said that. I understand your  
11 argument. I don't find it persuasive, so I'm going to decline  
12 to do as you request.

13 And I didn't ask you, Mr. Schlessinger, because I was  
14 in agreement with Ms. Ginsberg that the indictment should not be  
15 admitted -- or should not be sent back to the jury. Do you have  
16 a different view?

17 MR. SCHLESSINGER: I do, Your Honor. We have asked  
18 that it be sent back, but I understand the Court's ruling, and  
19 we understand.

20 THE COURT: And you don't want it sent back, do you,  
21 Ms. Ginsberg?

22 MS. GINSBERG: No, we don't.

23 THE COURT: All right. I'm not going to send it back.

24 All right. We'll allow the jury to retire and begin  
25 their deliberations.

1 MR. SCHLESSINGER: I'm sorry, Your Honor. Is  
2 Your Honor going to excuse the alternates at this time?

3 THE COURT: Yes, I am. They are Elizabeth Sheriff and  
4 Patrick Campo. Any objection to that, Mr. Schlessinger?

5 MR. SCHLESSINGER: No.

6 THE COURT: Ms. Ginsberg?

7 MS. GINSBERG: No, Your Honor. Just going back to the  
8 evidence just briefly, I do want to make sure that the recording  
9 of Mr. Sanders' statement is available to the jury, the  
10 transcript --

11 THE COURT: Did I admit it?

12 MS. GINSBERG: The transcript, at least, has been  
13 admitted. That should go back to the jury.

14 THE COURT: Whatever I have admitted, Ms. Ginsberg,  
15 will go back to the jury. If I have not admitted it because you  
16 didn't specifically offer it, it will not.

17 All right? This is not the time to offer any piece of  
18 evidence that wasn't specifically offered at the time.

19 MS. GINSBERG: One last thing, Your Honor.

20 THE COURT: Yes, your client is sending you notes. Go  
21 ahead.

22 MS. GINSBERG: Your Honor, for the record, the phone  
23 was charged when it was seized, and so that is the format that  
24 the phone should be given to the jury.

25 THE COURT: All right. Let me be clear. I have

1 rejected your argument that the phone be sent back -- the phone  
2 will go back, but not with a device that enables the jury to  
3 access it. That's what you wanted, and I have denied that.

4 MS. GINSBERG: Yes, Your Honor.

5 THE COURT: Anything further, Mr. Schlessinger?

6 MR. SCHLESSINGER: No, Your Honor.

7 (END BENCH CONFERENCE.)

8 THE COURT: All right, ladies and gentlemen. I'm sure  
9 you all know how many persons comprise a jury in a federal  
10 criminal case. Of course it is 12. Two of you have been  
11 alternates. We could not have proceeded in this case without  
12 your participation. So we are grateful to you for that. But  
13 it's now my duty to excuse you, number 42, Ms. Sheriff, and  
14 number 6, Mr. Campo. Yes.

15 Now, I'm going to excuse you and you may take your  
16 books. But I'm going to ask you that you refrain from  
17 discussing this matter with anyone. In other words, remain as  
18 if I were just having another recess. The reason for that is  
19 that it may be necessary to call you back and ask you to serve.  
20 It would be a very rare circumstance where that might be  
21 necessary. So I wouldn't be too worried about it, but it could  
22 happen. In 34 years of my doing this, it has not happened. But  
23 it may.

24 So please remain so that you don't discuss the matter  
25 with anyone because, if you're recalled, that will be the first

1 thing I'll ask you, whether you've discussed the matter with  
2 anyone or undertaken any investigation, because you remain just  
3 as you are.

4 But the Court thanks you, again, for your service.  
5 Again, I tell you, we could not have proceeded without your  
6 participation.

7 You may take your books now and depart. Let me ask the  
8 court security officer, do we have the means to communicate?

9 COURT SECURITY OFFICER: I'm sorry?

10 THE COURT: Do we have the means to communicate with  
11 Ms. Sheriff and Mr. Campo?

12 COURT SECURITY OFFICER: Do we have cell phones?

13 THE COURT: All right. I'll do it this way. Give him  
14 a cell number, please, and that means that, if we need to reach  
15 you, we will.

16 Now, once there's a result, we will call you. We will  
17 tell you what the result is.

18 All right. You may depart.

19 (Alternate jurors excused.)

20 THE COURT: All right. Now, ladies and gentlemen, I'm  
21 going to have you retire. Take your books with you. You'll go  
22 into the jury room or -- is it the jury room or are we going to  
23 use the large conference room?

24 COURT SECURITY OFFICER: The large conference room.

25 THE COURT: Good. That enables you to have social

1 distancing. There is a method to our madness. When we use jury  
2 rooms in the non-pandemic times, you're much closer together and  
3 you don't have a window to look out; it's an encouragement to do  
4 the work that you've been asked to do. But here you'll be in a  
5 much larger conference room so you'll be able, if you wish, to  
6 retain or to maintain your social distancing. Some people want  
7 it. Some people don't. Individual. You decide what you want.  
8 Accommodate each other. That's what I do. I wear the mask when  
9 it makes other people feel better and when it's required, and I  
10 may not otherwise.

11 Now, you may follow -- and this time you won't hear the  
12 familiar litany of refraining from discussing the matter among  
13 yourselves because the time has arrived when you must do that.  
14 Once all 12 of you are in the room, everything is in the room,  
15 the verdict form, the tape recorder with my instructions, and  
16 the exhibits are all in the room, the door closes, and the court  
17 security officer leaves, then you may begin your deliberations.  
18 And you may deliberate as long or as little as you like.

19 When lunches come, you can decide to eat your lunch,  
20 everybody continuing to deliberate, or you can take a break.  
21 You may determine that you want to do that. But if you take a  
22 break and you don't deliberate, people leave the room --  
23 remember, you may not deliberate unless all 12 of you are  
24 present.

25 All right. You may follow the court security officer

1 out.

2 (Jury out at 11:06 a.m.)

3 THE COURT: As I recall, the interview of defendant was  
4 offered both in an audio form and a transcript form. Do you  
5 agree, Mr. Schlessinger?

6 MR. SCHLESSINGER: Yes, that's correct, Your Honor.

7 THE COURT: All right. Both should go back to the  
8 jury. What were the exhibit numbers, Ms. Ginsberg?

9 MS. GINSBERG: DX-5. The transcript is DX -- the  
10 Defendant's Exhibit 5.

11 THE COURT: Is that right, Mr. Schlessinger?

12 MR. SCHLESSINGER: Yes, Your Honor. The audio of the  
13 entire thing is Government's Exhibit 101. The transcript of  
14 that is Defense Exhibit 5.

15 THE COURT: All right. Court stands in recess. You  
16 may, of course, leave the courthouse, but leave a number where  
17 you can be reached in the event there's a question or a verdict.

18 MS. GINSBERG: Judge, I think we'll probably be just  
19 across the street.

20 THE COURT: I'm sorry?

21 MS. GINSBERG: I think we'll be just across the street  
22 at the Westin, so we'll be very close to the courthouse.

23 THE COURT: Suit yourself. It's --

24 MS. GINSBERG: Thank you.

25 THE COURT: -- entirely up to you all.

1 All right. Court stands in recess until the jury  
2 reaches a verdict, because I don't plan to recess them or  
3 inquire of them how much they wish to continue to deliberate  
4 today until 5 o'clock or so. And that's when I'll have the  
5 court security officer inquire of them of that.

6 MS. GINSBERG: Thank you, Your Honor.

7 THE COURT: Court stands in recess.

8 (Recess taken at 11:08 a.m.)

9 THE COURT: We have a note from the jury. I'll read  
10 the note and then the court security officer can show it to  
11 counsel and you can look at it together at the podium.

12 "Judge Ellis, the jury has reached a verdict.

13 10/27/21, 12:30 p.m.," I can't read the signature.

14 Tell me who signed it. Brost. Male or female?

15 COURTROOM CLERK: Male.

16 THE COURT: Hand it to the court security officer. The  
17 parties may look at it at the bench and then I will tell you how  
18 the verdict will be received.

19 I'll have the note made a part of the record in this  
20 case. And the way in which the verdict will be received is,  
21 after the jury is brought in, the deputy clerk -- and I'll tell  
22 this to the jury as well. The deputy clerk will be asked  
23 whether the jury has reached a verdict, and upon receiving an  
24 affirmative answer, presumably from the foreperson, the deputy  
25 clerk will ask for the verdict form.

1           And then I will review the verdict form to ensure that  
2           it's correct as to form. If it isn't -- only as to form. In  
3           other words, if they checked "not guilty" and "guilty" to the  
4           same count, I'll have you on the earphones and discuss how the  
5           matter will be dealt with.

6           On the other hand, if there's no problem as to form, I  
7           will have the deputy clerk publish the verdict, which will  
8           require defendant to stand, face the jury, and then the deputy  
9           clerk will publish the verdict. And after the deputy clerk  
10          publishes the verdict, then I will have some words of thanks for  
11          the jury.

12          Any questions, Mr. Schlessinger?

13          MR. SCHLESSINGER: No, Your Honor.

14          THE COURT: Ms. Ginsberg?

15          MS. GINSBERG: No, sir.

16          THE COURT: All right. Bring the jury in, please.

17          (Jury in at 1:08 p.m.)

18          THE COURT: Ladies and gentlemen, I've received a note  
19          signed by Mr. Brost. I assume you're the foreperson?

20          JURY FOREPERSON: That's correct, Your Honor.

21          THE COURT: I've received a note indicating the jury  
22          has reached a unanimous verdict. Is that correct?

23          JURY FOREPERSON: That's correct, Your Honor.

24          THE COURT: Now, the way in which a verdict is received  
25          in this case, let me describe that to you. The deputy clerk



1 will ask the foreperson whether the jury has reached a unanimous  
2 verdict, and when you respond affirmatively, she'll ask for the  
3 verdict form. She'll give me the verdict form. I will then  
4 review it to ensure that it is correct as to form; in other  
5 words, that you didn't do something like put down "not guilty"  
6 and "guilty" for the same count.

7           Once I review -- I'm not interested in the result, I'm  
8 interested in whether the form is correct. And then, if I  
9 conclude that it is, I will have the deputy clerk publish the  
10 jury verdict, which she will do by reading it with the defendant  
11 standing and facing the jury.

12           And after that, I will have some words of thanks to you  
13 and advice and instruction, and then permit you to retire.

14           All right. The deputy clerk may proceed.

15           COURTROOM CLERK: Mr. Foreman, has the jury agreed upon  
16 the verdict?

17           JURY FOREPERSON: Yes, we have.

18           COURTROOM CLERK: Will you hand it to the court  
19 security officer, please.

20           THE COURT: You may publish the verdict.

21           COURTROOM CLERK: Will the defendant please stand and  
22 face the jury. In the case United States of America versus  
23 Zackary Ellis Sanders, Case Number 2020-CR-143, with respect to  
24 Count 1, production of child pornography, we the jury find the  
25 defendant, Zackary Ellis Sanders, guilty.

1           With respect to Count 2, production of child  
2 pornography, we the jury find the defendant, Zackary Ellis  
3 Sanders, guilty.

4           With respect to Count 3, production of child  
5 pornography, we the jury find the defendant, Zackary Ellis  
6 Sanders, guilty.

7           With respect to Count 4, production of child  
8 pornography, we the jury find the defendant, Zackary Ellis  
9 Sanders, guilty.

10          With respect to Count 5, production of child  
11 pornography, we the jury find the defendant, Zackary Ellis  
12 Sanders, guilty.

13          With respect to Count 6, receipt of child pornography,  
14 we the jury find the defendant, Zackary Ellis Sanders, guilty.

15          With respect to Count 7, receipt of child pornography,  
16 we the jury find the defendant, Zackary Ellis Sanders, guilty.

17          With respect to Count 8, receipt of child pornography,  
18 we the jury find the defendant, Zackary Ellis Sanders, guilty.

19          With respect to Count 9, receipt of child pornography,  
20 we the jury find the defendant, Zackary Ellis Sanders, guilty.

21          With respect to Count 10, receipt of child pornography,  
22 we the jury find the defendant, Zackary Ellis Sanders, guilty.

23          With respect to Count 11, receipt of child pornography,  
24 we the jury find the defendant, Zackary Ellis Sanders, guilty.

25          With respect to Count 12, possession of child

1 pornography, we the jury find the defendant, Zackary Ellis  
2 Sanders, guilty. Did a visual depiction involved in the offense  
3 charged in Count 12 involve a prepubescent minor or a minor who  
4 had not attained 12 years of age? Yes.

5 So say we all, this 27th day of October, 2021,  
6 Foreperson.

7 THE COURT: You may be seated. The deputy clerk will  
8 now poll the jury to ensure it is their individual verdict.

9 COURTROOM CLERK: Juror number 19, Joseph Hilton, is  
10 this your verdict?

11 JUROR: Yes.

12 COURTROOM CLERK: Juror number 2, Bruce Arthur, is this  
13 your verdict?

14 JUROR: Yes.

15 COURTROOM CLERK: Juror number 31, Joshua Mecham, is  
16 this your verdict?

17 JUROR: Yes.

18 COURTROOM CLERK: Juror number 2, Candice Alidoosti, is  
19 this your verdict?

20 JUROR: Yes.

21 COURTROOM CLERK: Juror number 26, Richard Loveland the  
22 second, is this your verdict?

23 JUROR: Yes.

24 COURTROOM CLERK: Juror number 33, Lucinda McLaughlin,  
25 is this your verdict?

1 JUROR: Yes.

2 COURTROOM CLERK: Juror number 27, Patrick Kerns, is  
3 this your verdict?

4 JUROR: Yes.

5 COURTROOM CLERK: Juror number 6, Jason Brost, is this  
6 your verdict?

7 JUROR: Yes.

8 COURTROOM CLERK: Juror number 38, Christy Rice, is  
9 this your verdict ?

10 JUROR: Yes.

11 COURTROOM CLERK: Juror number 31, Michael Mason, is  
12 this your verdict?

13 JUROR: Yes.

14 COURTROOM CLERK: Juror number 16, Kamel Elhassani, is  
15 this your verdict?

16 JUROR: Yes.

17 COURTROOM CLERK: And juror number 7, Razzakul  
18 Chowdhury, is this your verdict?

19 JUROR: Yes.

20 THE COURT: All right. Ladies and gentlemen, I'm now  
21 able to excuse you, but I first want to thank you for your  
22 service as jurors in this case. This lasted some considerable  
23 period of time, and there was a good deal of evidence and  
24 testimony that you listened to. And it was apparent to the  
25 Court that you paid careful and close attention to the evidence

1 as it was presented, and it's also apparent that you deliberated  
2 conscientiously in order to reach a unanimous verdict.

3 Now, you are no longer under any constraints to speak  
4 to anyone about this case. However, I will say this. The  
5 lawyers may not contact you. They're forbidden by local rule  
6 from doing so. If a lawyer contacts you, I want to know about  
7 it immediately.

8 You, however, may speak to whoever you wish about the  
9 case. In that regard, let me add a caution. It's not an order,  
10 it's a caution. I am always disturbed when I see in the media  
11 jurors discussing on the media what went on in the course of  
12 jury deliberations. That seems to me to be inappropriate. It  
13 does an injury to the deliberative process if jurors knew in  
14 advance that everything that they said and did in the course of  
15 deliberations was going to be grist for the media mill.

16 So I suggest to you - and it is a suggestion, not an  
17 order - that you have a duty of confidentiality to your fellow  
18 jurors to maintain the confidentiality of what went on in the  
19 course of your deliberations. But that is a decision you must  
20 make.

21 Now, I'm going to excuse you, again, with thanks. I  
22 invite you -- this is not my courthouse, and although this is  
23 the courtroom where I do all my work and my chambers are  
24 attached to it, it doesn't belong to me. None of this belongs  
25 to me. It is the people's courthouse. It's your courthouse as

1 well as mine, and these proceedings, all of the proceedings that  
2 I am in, are proceedings that you and every American should have  
3 an interest in.

4           So I invite you, if you have a comment or a criticism  
5 or something you want to express to me, to come back and tell me  
6 about it. But don't do it for eight or 10 weeks, not until this  
7 case is completely over. What will happen now is that I will  
8 order the preparation of a presentence investigation report.  
9 This is a document which has a great deal of information about  
10 the defendant in it that I can take into account in imposing an  
11 appropriate sentence.

12           And then, about eight or 10 weeks from now, or perhaps  
13 even longer, I will impose an appropriate sentence. And after  
14 that is concluded, then I'm happy to see any of you who wish to  
15 come and talk to me about the case. And you can always call the  
16 clerk's office, particularly Ms. Randall, the deputy clerk, and  
17 ask if the case is totally over. And I will have the deputy  
18 clerk call the alternate jurors and tell them about the verdict,  
19 and relate to them as well that they cannot be contacted, but  
20 they're free to speak to whomever they wish.

21           And you can add the caution that I added to the jurors  
22 here.

23           All right. You have your books. Take your books with  
24 you, thank you again for your service. You're free now to  
25 depart.

1 (Jury out at 1:20 p.m.)

2 THE COURT: Mr. Sanders, come to the podium, please,  
3 sir. Mr. Sanders, you have been found guilty by the jury. I'll  
4 enter judgment in that regard at the appropriate time. But I'm  
5 going to order the preparation of a presentence investigation  
6 report. This is a vitally important document because it's a  
7 document on which the Court will chiefly rely in imposing an  
8 appropriate sentence.

9 And you have a role to play in the preparation of this  
10 report. You will be asked by a probation officer to provide  
11 information so that the report can be prepared. You'll be asked  
12 to provide information about your family, your background, your  
13 education, your work experience, your health and financial  
14 conditions, any criminal history that you may have, and indeed  
15 anything that may be material in any way to the Court's  
16 sentencing decision. And you may have your counsel with you  
17 when you provide that information to the probation officer.

18 And when the report is completed, Mr. Sanders, you'll  
19 receive a copy. So will your counsel. You'll have an  
20 opportunity to review it, to review it with your counsel, and  
21 then to call to the Court's attention any corrections you think  
22 should be made to the report, or any objections you have to the  
23 facts, conclusions, or calculations contained in the report.  
24 And the Government will also have an opportunity to register its  
25 corrections or objections.

1           Now, if the Government disputes those objections or  
2           corrections that you offer, or you dispute those that are  
3           offered by the Government, then the Court will hold a hearing  
4           and then the Court will resolve the dispute at that time by  
5           issuing findings.

6           Then the Court will proceed to sentencing. At the time  
7           of sentencing, Mr. Sanders, you'll have the right to address the  
8           Court and to say anything at all you wish to the Court by way of  
9           extenuation, mitigation, or indeed anything, Mr. Sanders, that  
10          you think the Court should know before the Court decides what  
11          sentence to impose in your case. You won't be required to  
12          address the Court, but you will have the opportunity to do it.  
13          And, of course, your counsel - or one of them, rather - will  
14          have an opportunity to address the Court on your behalf.

15          I will set sentencing for the 4th of March at 9 a.m.  
16          Is that date available ?

17          MS. GINSBERG: I expect so, Your Honor. I don't have  
18          my calendar, but unless the Elsheikh matter is in trial at that  
19          date, I am available on that date.

20          THE COURT: Well, it might be. If it is, Ms. Ginsberg,  
21          we'll accommodate that, since that's also mine.

22          MS. GINSBERG: Yes, sir.

23          THE COURT: And we'll see. So I understand that you  
24          you can't be in two places at one time, and you need some time  
25          to prepare. So we'll set it for the 4th of March, and I'll



1 change that date if it becomes necessary to do so.

2 Mr. Schlessinger, I assume that date is okay with you,  
3 or whoever is going to do this?

4 MR. SCHLESSINGER: Yes, it is, Your Honor.

5 THE COURT: All right. Anything else to be  
6 accomplished in this matter today on behalf of the Government?

7 MR. SCHLESSINGER: No, Your Honor.

8 THE COURT: On behalf of the defendant?

9 MS. GINSBERG: Just one thing. If we could ask the  
10 Court's assistance. I'm not sure what the conditions at the  
11 Alexandria jail are in terms of crowding or COVID, but we would  
12 ask the Court to ask the marshal service to have Mr. Sanders  
13 retained at the Alexandria Detention Center as opposed to being  
14 sent to any other of the regional jails. As Your Honor knows,  
15 you facilitated his ability to get ongoing medical treatment.  
16 He is receiving specialized treatment --

17 THE COURT: Do you have any objection to that,  
18 Mr. Schlessinger?

19 MR. SCHLESSINGER: Your Honor, just that I think the  
20 Bureau of Prisons and the marshals need to be allowed sufficient  
21 latitude to take whatever steps necessary.

22 THE COURT: Well, yes, but I can always trump that, and  
23 that's what Ms. Ginsberg is asking me to do. He's receiving  
24 treatment for another condition, so unless the marshals tell me  
25 it's a real problem, I want him kept here.

1           DEPUTY MARSHAL: Understood. I'll pass it up the  
2 chain.

3           THE COURT: Anything else today?

4           MS. GINSBERG: No, sir.

5           THE COURT: I want to thank counsel for your  
6 cooperation. I don't recall a case in this court that I've had  
7 in which four law firms have been involved. I've had three. I  
8 went back to check. I've had three, but four was a new record.  
9 And I appreciate the cooperation of counsel in getting this  
10 matter tried.

11           Court stands in recess until tomorrow -- there may be  
12 something else tomorrow. All right. Court stands in recess.

13           (Off the record at 1:26 p.m.)

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17                           **CERTIFICATE OF OFFICIAL COURT REPORTER**

18

19           I, Rebecca Stonestreet, certify that the foregoing is a  
20 correct transcript from the record of proceedings in the  
21 above-entitled matter.

22

23

24           \_\_\_\_//Rebecca Stonestreet\_\_\_\_

                          \_\_12/3/21\_\_

25           **SIGNATURE OF COURT REPORTER**

**DATE**